JL5255

Reconciliation from a Legal Perspective

by Aniceto Guterres Lopes, Director, Yayasan HAK

The East Timorese political elite as well as the bishops, pastors, and reverends have communicated the importance of reconciliation to the broad public. In fact, long before the referendum on August 30, 1999, the CNRT leadership and the pro-autonomy groups unceasingly talked about reconciliation, even though it only had rhetorical content and deviated strongly from the real meaning of the term, to the point that political meetings were called reconciliation meetings.

In the general society, the concept of reconciliation is not foreign, although most people have a very minimal understanding of its true meaning, thinking that reconciliation means to simply shake hands and hug one-another or to apologize to a group or individual that you have wronged. But at the same time, critical voices from the people arise filled with hope and the desire for there to be a reconciliation based on justice.

Free of any pre-conceived notions of the meaning of the word, it is important to look at the work of reconciliation from different points of view and to place it into a context where reconciliation will be a process. Reconciliation in the context of Timor Lorosae does not only have a political aspect, but also social, cultural, economical, legal and moral aspects as well.

In speaking about reconciliation, there are a number of important questions we must answer: Why is reconciliation important? With what intention do we seek reconciliation? Reconciliation between whom? And what is the process by which we should realize this reconciliation? The goal of this article is to answer these questions from a legal and justice perspective.

Reconciliation and Justice

The politics of division applied under Portuguese colonial rule and, over the past 24 years, under the Indonesian occupation have torn the people of East Timor into groups that quarrel with one another. The most visible evidence of this in our memory is the separation of the people into pro-integration and pro-independence groups.

All kinds of forms of human rights abuses and injustices happened during these times. The colonial power directly committed atrocities or did so indirectly through groups of people it had manipulated and/or controlled. Killing, suppression, robbery, and exploitation were happening amongst East Timorese. There was no effective legal protection in this context that could have brought about the form of legal justice that is a fundamental right of each human being.

The peak of this oppression occurred after the referendum of August 30, 1999, when an absolute majority of East Timorese society expressed their resolve for freedom from the despicable colonization and occupation practiced by Indonesia. In response, the Indonesian military and their pro-integration militia carried out their scorched earth policy. Countless civilians were victims of murder, rape, and various forms of torture. In addition, the military forced people to flee, burning and looting civilians' property.

We must admit that these various forms of oppression and injustice resulted in extraordinary physical and spiritual suffering. In addition, these experiences undermined East Timorese values and culture. This is a serious matter that we must handle in order to return self worth to the people of East Timor as well as to enhance national unity.

After inhaling the air of freedom from the Indonesian occupation, we must now begin building the new East Timorese nation-state. To be successful, this new nation-state must result in a new society that is free from a past full of oppression, human rights violations and injustice. It must be a society that inspires the entire population to respect the law, human rights, democracy and social justice.

Efforts at reconciliation must be located in the context of the problems of the past. Only by coming to terms with these problems will we be able to create a base to develop a new society consistent with people's hopes. In this matter, reconciliation is more than a political effort shaped by apologies, handshakes, and embraces.

Shaping an administration similar to the previous one will only serve to institutionalize impunity. Reconciliation such as this actually disavows the values of human rights and justice that must be an important element in the building of a new society.

At the same time, law that is an instrument to protect human rights and bring justice cannot mean just anything. A serious challenge is to be able to envision a new East Timorese society where law is no longer authoritarian, unjust, oppressive and arbitrary. We must also recognize that the legal process is different from reconciliation.

Legal reconciliation

It is a basic principle that we must base reconciliation on the effort to realize justice for the entire society, especially for the victims. But we cannot build justice without truth. It is important to express the facts of violations and injustice before trying to achieve solutions realized through various mechanisms, legal or otherwise. In talking about legal processes for war crimes and crimes against humanity, the ideal is for the proceedings to take place to under an international court. But depending on the weight of the crime, particular crimes should also pass through national courts.

A court is an institution that determines responsibility for crime, and makes the guilty party accountable for his/her actions. The court as an institution must carry out its functions in a just and transparent manner that does not collide with human rights. If the citizenry is not confident that the judicial process is just and transparent, a culture of lawlessness and violence will arise.

The expression of truth is not only important for the legal process and/or for the obtaining of some form of formal justice. More than that, the expression of truth is also important for the sake of writing the history of East Timorese society as one nation, and to guarantee the rights of victims as well as their families. The uncovering of the truth also provides an opportunity for society to implement traditions appropriate with traditional laws long practiced in East Timor.

Given the spiritual injury experienced by society, the healing process must be gradual. This reconciliation is inevitably tied to the nature of the legal process. Only if there is justice can true reconciliation, or social healing, occur.

The legal process can take place at court as well as outside of court under traditional socio-legal mechanisms. Both elements, that is justice and truth, can be carried out together, and can thus support each other.

Justice through the courts is usually a relatively long process. Because of this, we cannot see maintenance of the law in the context of reconciliation as a means to solve problems from the past and guarantee justice for victims. Efforts or processes to maintain the law are very important to create precedents or create a basis for life in East Timor for the future, so that law, either traditional or formal, is the highest instrument to protect human rights which are essential for freedom, democracy and rule of law.

The results of the legal process can give freedom to a person proven innocent and there are also those who are found guilty yet remain unpunished because their actions are forgiven through consensus in the court. Yet there are also those sentenced to prison. Consistent with the modern concept of prisons, those sentenced go through a process of rehabilitation because of their actions, with the purpose that the person will at least be aware of his actions and not repeat them, or perhaps undergo a more complete change. Prisons are no longer viewed as a place or a process that is humiliating, or a place to give release to revenge. Rather they are a place for the convict to be rehabilitated before returning to society. So from this process of course there will be an impact or positive contribution in the effort to develop a new East Timorese society and country.

Justice that is whole

So far I have spoken about justice with the understanding that people who are guilty are brought to justice and later imprisoned, but what about the fate of those people who are the victims? People do not think about the future or past impact for the victim, and often the fate of the victim is not only ignored by the criminal but also most importantly by the government.

People who are victims or their families have to be given compensation. This follows the concept of justice that is whole under the law. A person is arrested because they violated a national criminal law or even an international law (for example, war crimes, genocide, etc.), and also because the perpetrator causes a certain harm. Because the criminal is clearly at fault after being tried, there is also the responsibility to face the results of his/her actions. We should not consider the punishment received by the criminal as compensation for the victim.

If there are no efforts to give compensation and rehabilitation for the victim then justice has not yet occurred. For example a woman whose husband was murdered experiences spiritual pressure that can result in emotional problems and her psychological condition is affected. After the legal process the criminal is sentenced to ten years in prison while the woman who has lost her husband has to continue to live, playing two roles as the backbone of her family, raising children in an economic situation that is insufficient. In this case any normal person would feel that this is not just. In the legal process there is a criminal fine, but this fine is paid to the government and is not for the victim who has lost a member of the family due to the actions of others.

The problem is one of responsibility for replacing the loss or compensating and rehabilitating the victim. Is it the responsibility of the criminal who has already been tried and sentenced? The government of East Timor/UNTAET or the government of Indonesia? Or other social groups such as NGOs? The answer to these questions is important, because the problem of responsibility is tied to the fate of the victim and his/her family. If their situation returns to normal and they can start a new life, in the end it will help to create a socio-economic balance and/or justice in the new East Timor. We should not view such reconciliation as an isolated event, but rather a process within the context of national reconstruction to create the kind of society for which we strive. from La'o Hamutuk 6/2000

CNRT Timor-Leste

Statement by
Xanana Gusm+úo, President, and Jos+¬ Ramos-Horta, Nobel Laureate and Vice President, National Council of Timorese Resistance/National Congress
We extend our deepest condolences to the families, friends and colleagues of the international workers killed this week in West Timor and to the U.N. community of which they were a vital part.

The brutal attack on the UNHCR office is the result of bad faith on the part of the Indonesian military leadership.They cannot escape responsibility by blaming militia.It is not only the refugees but the people of West Timor who are held hostage by militia gangs supported by elements of the military.

During the course of the Millennium Summit, we have met with Indonesian President Abdurrahman Wahid to reiterate our full support for his efforts to bring democracy to his country. We call on him and the international community to forge a common front against impunity and organized crime in Indonesia and West Timor.

If Indonesia fails to deal with the violence against refugees and international staff, Indonesia must seek help from its ASEAN neighbors and international community to restore law and order in West Timor.

The U.N. Security Council must now consider establishing an international tribunal on East Timor to punish those responsible for war crimes and crimes against humanity. Only a tribunal will send a clear signal to the criminal elements who destroyed East Timor and continue to terrorize refugees, international staff and others that the world does not tolerate their impunity. At the same time we reiterate our continuing trust in the leadership of Indonesia's Attorney General Marzuki Darusman. We view a tribunal as complementary to his efforts.

Xanana Gusm+úo
Jos+¬ Ramos-Horta
National Council of Timorese Resistance/National Congress

New York, New York
8 September 2000